



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Schell Electronics, Inc.

File: B-224696

Date: September 24, 1986

DIGEST

1. A bidder's failure to acknowledge receipt of a material amendment renders the bid nonresponsive; the fact that the bidder may not have received the amendment until the day after bid opening is irrelevant absent evidence that the failure to receive the amendment resulted from a deliberate attempt by the contracting agency to exclude the firm from competing.

2. Protest that amendment was not received until after bid opening is untimely when not filed within 10 working days after the protester received the amendment.

DECISION

Schell Electronics, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAB07-86-B-U036, issued by the Department of the Army. The Army rejected the bid because Schell did not acknowledge the receipt of amendment 2. Schell contends that it did not receive the amendment, dated August 5, until August 14, the day after bid opening. Schell asserts that it was unreasonable for the agency to expect the amendment, which was mailed from New Jersey, to be received by Schell, located in Kansas, and returned to New Jersey, in 6 working days (August 5 to August 13).


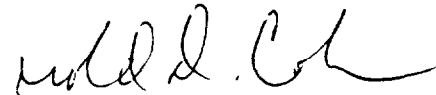
We dismiss the protest.

A bidder's failure to acknowledge a material amendment to an IFB generally renders the bid nonresponsive. Project Engineering, Inc., B-222005, Feb. 25, 1986, 86-1 C.P.D. ¶ 196. The fact that the bidder may not have received the amendment until after bid opening is not relevant unless the failure resulted from a conscious or deliberate effort by contracting officials to exclude the firm from competition. Rawlings Mechanical Corp., B-215741, July 24, 1984, 84-2 C.P.D. ¶ 107.

Schell does not allege that the amendment was not material or that the Army deliberately attempted to exclude the firm from consideration for award. In these circumstances, Schell has not presented a valid basis for protest.

In any event, under our Bid Protest Regulations, a protest concerning other than an apparent impropriety in the solicitation must be filed with the contracting agency or this Office within 10 days after the protester knows or should know the basis of its protest. 4 C.F.R. § 21.2(a)(3) (1986). Here, Schell should have known of the basis of its protest on August 14, when it received amendment 2, since on that date the firm knew bid opening already had occurred. Since we did not receive Schell's protest until September 16, it is untimely.

The protest is dismissed.



Robert M. Strong
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General Counsel